

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DAVID THOMPSON,

Plaintiff,

V.

PERRY RUSSELL, et al.,

## Defendants.

Case No.: 3:23-cv-00341-MMD-CSD

## ORDER

(ECF Nos. 9, 10)

9 State prisoner David Thompson brings this civil-rights action under 42 U.S.C.  
10 § 1983, contending that his rights were violated while he was incarcerated in the custody  
11 of the Nevada Department of Corrections (“NDOC”). (See ECF No. 6). On March 13,  
12 2024, the Court screened Plaintiff’s first amended complaint, allowing claims to proceed,  
13 temporarily staying this action for 90 days, and referring it to the Court’s Inmate Early  
14 Mediation Program. (ECF No. 7). A mediation conference is scheduled for May 14, 2024.  
15 (ECF No. 12). However, Plaintiff moves to recuse or disqualify the Nevada Attorney  
16 General’s Office from representing any party in this action, arguing there is a conflict of  
17 interest. (ECF No. 9). And he moves for “default judgment,” arguing the Attorney  
18 General’s Office failed to respond to the disqualification motion. (ECF No. 10). For the  
19 reasons discussed below, the Court denies Plaintiff’s motions.

## I. DISCUSSION

## A. Motion for Default Judgment (ECF No. 10)

22 To the extent Plaintiff's motion seeks entry of default or default judgment, his  
23 requests are denied as premature. Default can be entered against a party who has failed  
24 to plead or otherwise defend against an action. Fed. R. Civ. P. 55(a). Default judgment  
25 can be entered against a party that has been defaulted if certain other requirements are  
26 met. See *id.* at 55(b). But this action is still in the screening stage, which means no  
27 defendant has been served with process and no defendant is currently required to defend

1 against this action. And no defendant can be served with process and therefore required  
 2 to defend against this action until the Court orders that to happen.

3 To the extent Plaintiff contends that either the NDOC or the Nevada Attorney  
 4 General's Office is a proper defendant in this action, he is mistaken. Consistent with the  
 5 screening order, the Clerk of the Court added the NDOC to the docket as an interested  
 6 party for the purpose of participating in the Court's mediation program. (See ECF No. 7  
 7 at 14). The Attorney General's Office has entered a limited notice of appearance on behalf  
 8 of the NDOC for that narrow purpose. (ECF No. 11).

9 To the extent Plaintiff moves to sanction the NDOC or the Attorney General's  
 10 Office for failing to respond to his disqualification motion, his request is denied. In the  
 11 screening order, the Court stayed this action for 90 days and instructed that "the parties  
 12 are not required to respond to any paper filed in violation of the stay unless specifically  
 13 ordered by the Court to do so." (ECF No. 7 at 13). Plaintiff's disqualification motion is not  
 14 among the papers that the Court excepted from the temporary stay of this action. (See *id.*  
 15 at 12–14). When Plaintiff filed his disqualification motion, docket text was automatically  
 16 generated stating that responses to the motion are due by March 29, 2024. (ECF No. 9).  
 17 But the Court clarifies that it has not ordered any response to that motion.

18 **B. Motion to Disqualify Attorney General's Office (ECF No. 9)**

19 Because of their potential for abuse, the Ninth Circuit has cautioned that  
 20 "disqualification motions should be subjected to particularly strict judicial scrutiny." *Optyl*  
 21 *Eyewear Fashion Int'l Corp. v. Style Companies, Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985)  
 22 (cleaned up) (collecting cases). "As a general rule, courts do not disqualify an attorney on  
 23 the grounds of conflict of interest unless the former client moves for disqualification."  
 24 *Kasza v. Browner*, 133 F.3d 1159, 1171 (9th Cir. 1998) (collecting cases). Federal courts  
 25 apply state law when determining whether to disqualify an attorney from representing a  
 26 party. *In re Cnty. of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000). Under Nevada law,  
 27 "[t]he party seeking to disqualify an attorney bears the burden of establishing that it has  
 28 standing to do so." *State ex rel. Cannizzaro v. First Jud. Dist. Ct. in & for Cnty. of Carson*

1 *City*, 466 P.3d 529, 531–32 (Nev. 2020) (cleaned up) (quoting *Liapis v. Second Judicial*  
 2 *Dist. Court*, 282 P.3d 733, 737 (Nev. 2012)). “The general rule is that only a former or  
 3 current client has standing to bring a motion to disqualify counsel on the basis of a conflict  
 4 of interest.” *Id.* (cleaned up) (quoting *Liapis*, 282 P.3d at 737; and Model Rules of Prof 1  
 5 Conduct R. 1.7 annot.).

6 Plaintiff lacks standing to move for disqualification. Plaintiff argues that a different  
 7 inmate filed a complaint with the Attorney General’s Office seeking to have it investigate  
 8 and prosecute the defendants for crimes against older persons arising out of the events  
 9 at issue in this action. (ECF No. 10 at 2–3). Plaintiff also argues that the Attorney  
 10 General’s Office committed fraud on the Court in his other lawsuit: Case No. 3:17-cv-  
 11 00670-RCJ-CSD. (ECF No. 9 at 2). Plaintiff might be referencing his appellate position  
 12 that defendants breached the parties’ settlement agreement by tendering the settlement  
 13 funds late, and Deputy Attorney General (“DAG”) Douglas Rands prematurely filed the  
 14 stipulation for dismissal. See Case No. 3:17-cv-00670-RCJ-CSD, at ECF Nos. 135, 138.  
 15 The Court notes that DAG Rands has not appeared in this action on behalf of the NDOC  
 16 or any defendant. In any event, Plaintiff provides no evidence that he is a current or former  
 17 client of the Attorney General’s Office or any of its attorneys.

18 To the extent Plaintiff contends that there is an inherent conflict because the  
 19 Nevada Attorney General’s Office is required to investigate and prosecute the  
 20 defendants, he is mistaken. Plaintiff’s reliance on 42 U.S.C. § 1997a is misplaced: that  
 21 statute authorizes the **United States** Attorney General to institute a **civil** action against  
 22 state actors to correct “egregious or flagrant” unconstitutional conditions affecting  
 23 institutionalized persons. The **Nevada** Attorney General, however, is “a constitutional  
 24 officer in the executive branch of government” whose various duties are established by  
 25 the Nevada Legislature. *Whitehead v. Nevada Comm’n on Jud. Discipline*, 878 P.2d 913,  
 26 917 (Nev. 1994) (citing *Ryan v. District Court*, 503 P.2d 842, 844 (Nev. 1972); and Nev.  
 27 Const. art. 5 § 19)). The Nevada Legislature has authorized the Attorney General’s Office  
 28 to investigate and prosecute certain crimes, but the office is not mandated to do so in

1 every instance. Rather, the office has discretion in exercising those functions. See, e.g.,  
2 Nev. Rev. Stat. § 228.270 (providing that a unit within the Attorney General's Office “**may**  
3 investigate and prosecute alleged abuse, neglect, exploitation, isolation or abandonment  
4 of an older person or vulnerable person” (emphasis added)); § 228.170(2) (providing that  
5 “the Attorney General **may** investigate and prosecute any crime committed by a person”  
6 who is incarcerated or acting in concert with an incarcerated person or involves violation  
7 of NRS Chapter 212 (emphasis added)). Relevant here, the Nevada Legislature similarly  
8 has authorized the Attorney General to commence or defend civil suits “**whenever the**  
9 **Governor directs or when, “in the opinion of the Attorney General,” such course of**  
10 **action is “necessary”** “to protect and secure the interest of the State[.]” Nev. Rev. Stat.  
11 § 228.170(1) (emphasis added).

12 Neither Plaintiff's belief that a deputy attorney general committed fraud on the court  
13 in a different action nor the mere submission of a complaint by Plaintiff or another inmate  
14 to the Nevada Attorney General's Office are sufficient to justify disqualifying that office  
15 from representing any party in this action. Plaintiff's motion to disqualify the Attorney  
16 General's Office is therefore denied.

17 **II. CONCLUSION**

18 It is therefore ordered that Plaintiff's motions to disqualify the Nevada Attorney  
19 General's Office (ECF No. 9) and for default judgment (ECF No. 10) are denied.

20 DATED THIS 11th day of April 2024.

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UNITED STATES MAGISTRATE JUDGE

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